

Senate Bill 53

By: Senators Smith of the 52nd, Harp of the 29th, Hill of the 32nd, Wiles of the 37th and Weber of the 40th

AS PASSED

AN ACT

To amend Article 2 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to legitimacy, so as to provide for a father to legitimate his child by establishing paternity; to provide where petitions of legitimation shall be filed and served; to address the issues of custody and visitation in certain legitimation actions; to provide for legitimation by a voluntary acknowledgment of paternity in certain circumstances; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 7 of Title 19 of the Official Code of Georgia Annotated, relating to legitimacy, is amended by striking Code Section 19-7-22, relating to petition for legitimation of child, notice to mother, court order, effect, and intervention by father, and inserting in lieu thereof the following:

"19-7-22.

(a) A father of a child born out of wedlock may render his relationship with the child legitimate by petitioning the superior court of the county of the residence of the child's mother or other party having legal custody or guardianship of the child; provided, however, that if the mother or other party having legal custody or guardianship of the child resides outside the state or cannot, after due diligence, be found within the state, the petition may be filed in the county of the father's residence or the county of the child's residence. If a petition for the adoption of the child is pending, the father shall file the petition for legitimation in the county in which the adoption petition is filed.

(b) The petition shall set forth the name, age, and sex of the child, the name of the mother, and, if the father desires the name of the child to be changed, the new name. If the mother is alive, she shall be named as a party and shall be served and provided an opportunity to be heard as in other civil actions under Chapter 11 of Title 9, the 'Georgia Civil Practice Act.'

(c) Upon the presentation and filing of the petition, the court may pass an order declaring the father's relationship with the child to be legitimate, and that the father and child shall be capable of inheriting from each other in the same manner as if born in lawful wedlock and specifying the name by which the child shall be known.

(d) A legitimation petition may be filed, pursuant to paragraph (2) of subsection (e) of Code Section 15-11-28, in the juvenile court of the county in which a deprivation proceeding regarding the child is pending.

(e) Except as provided by subsection (f) of this Code section, the court shall upon notice to the mother further establish such duty as the father may have to support the child, considering the facts and circumstances of the mother's obligation of support and the needs of the child as provided under Code Section 19-6-15.

(f) After a petition for legitimation is granted, if a demand for a jury trial as to support has been properly filed by either parent, then the case shall be transferred from juvenile court to superior court for such jury trial.

(f.1) The petition for legitimation may also include claims for visitation or custody. If such claims are raised in the legitimation action, the court may order, in addition to legitimation, visitation or custody based on the best interests of the child standard. In a case involving allegations of family violence, the provisions of paragraph (2) of subsection (a) of Code Section 19-9-1 shall also apply.

(g)(1) In any petition to establish paternity pursuant to paragraph (4) of subsection (a) of Code Section 19-7-43, the alleged father's response may assert a third-party action for the legitimation of the child born out of wedlock. Upon the determination of paternity or if a voluntary acknowledgment of paternity has been made and has not been rescinded pursuant to Code Section 19-7-46.1, the court or trier of fact as a matter of law and pursuant to the provisions of Code Section 19-7-51 may enter an order or decree legitimating a child born out of wedlock, provided that such is in the best interest of the child. Whenever a petition to establish the paternity of a child is brought by the Department of Human Resources, issues of name change, visitation, and custody shall not be determined by the court until such time as a separate petition is filed by one of the parents or by the legal guardian of the child, in accordance with Code Section 19-11-8; if the petition is brought by a party other than the Department of Human Resources or if the alleged father seeks legitimation, the court may determine issues of name change, visitation, and custody in accordance with subsections (b) and (f.1) of this Code section. Custody of the child shall remain in the mother unless or until a court order is entered addressing the issue of custody.

(2) In any voluntary acknowledgment of paternity which has been made and has not been rescinded pursuant to Code Section 19-7-46.1, when both the mother and father freely agree and consent, the child may be legitimated by the inclusion of a statement indicating a voluntary acknowledgment of legitimation."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.